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HEARINGS
BEFORE THE
SUBCOMMITTEE ON
MENT AND EMPLOYEE BENEFITS
OF THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS

FIRST SESSION
ON

H.R. 8822

A BILL TO AMEND SECTIONS 8331 AND 8332 OF TITLE 5,
UNITED STATES CODE, WITH RESPECT TO THE CREDIT-
ABLE SERVICE OF UNITED STATES COMMISSIONERS FOR
PURPOSES OF CIVIL SERVICE RETIREMENT

NOVEMBER 4 AND 6, 1975

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RECOMMENDATIONS

Hon. Thomas A. Tinsley, Director, Bureau of Retirement, Insurance, and Occupational Health, U.S. Civil Service Commission:

(1) Clarify the provisions of the bill so that it is specifically limited to the 28 magistrates (former Commissioners) that are presently serving.

Hon. Francis J. Carr, member, Legislative Committee, National Council of U.S. Magistrates:

(1) Keep the \$3,000 limit in the bill.

(2) Leave section 8331(1)(E) of title 5 United States Code as is. Strike section (1) of the bill.

RETIREMENT CREDIT FOR U.S. COMMISSIONERS

TUESDAY, NOVEMBER 4, 1975

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,

Washington, D.C.

The subcommittee met at 9 a.m., in room 304, Cannon House Office Building, Hon. Richard C. White (chairman of the subcommittee) presiding.

Mr. WHITE. The meeting will come to order.

The subcommittee has convened this morning to consider the merits of H.R. 8822, a bill introduced by Congressman Norman Y. Mineta of California. A further hearing on this bill is scheduled for Thursday, November 6, in this room to begin at 9 a.m.

This bill seeks to amend sections 8331 and 8332 of title 5, United States Code, with respect to the creditable service of U.S. commissioners for purposes of civil service retirement.

Presently, under section 8331(e) of title 5, a person who served as a U.S. commissioner can only be considered an employee for retirement purposes if he made \$3,000 or more annually in each of the last 3 consecutive calendar years ending after December 31, 1954. Section 1 of this bill seeks to eliminate the monetary requirement and thereby redefines "employee" to mean "a U.S. commissioner."

Further, under section 8332(i) of title 5, credit for purposes of retirement may not exceed 313 days in a year before July 1, 1945, or 260 days in a year after June 30, 1945; the employment and pay of a commissioner is deemed on a daily basis, when actually employed, to be computed at one three-hundred-and-thirteenth of a year for each day on which he performed service as a commissioner before July 1, 1945, and one two-hundred-and-sixtieth of a year for each day on which he performed service as a commissioner before July 1, 1945, and one two-hundred-and-sixtieth of a year for each day on which he performed service as a commissioner after June 30, 1945.

Section II of this bill would amend this present law to provide that a U.S. commissioner be given full-year retirement credit for services performed as a commissioner from the date of one's original appointment as commissioner to the date of separation from the office, except that credit shall not be allowed for a period for which the individual received credit for services other than in the capacity of a U.S. commissioner.

Our first witness this morning will be Congressman Norman Y. Mineta of California.

**STATEMENT OF HON. NORMAN MINETA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. MINETA. Before I begin my testimony, I would like to note for the record a correction on page 3 of the testimony. In the second paragraph which appears fully on page 3, the date in the fifth line should be corrected to read "December 31, 1954," rather than "June of 1945."

Mr. Chairman and members of the committee, it is indeed a privilege to appear before the Retirement and Employee Benefits Subcommittee this morning in support of H.R. 8822, which will allow for the provision of full-year retirement credit for the service rendered to the U.S. Government by former U.S. commissioners prior to the enactment of the Federal Magistrates Act of 1968.

Prior to 1971, U.S. commissioners performed valuable and necessary services to the United States. Under the commissioner system, prior to the appointment of the first magistrate in each judicial district, the commissioners were authorized by the Federal rules of criminal procedure to receive complaints, issue warrants, and conduct precommitment proceedings in criminal cases in the district courts.

In certain instances, they were legally authorized to try and sentence persons committing petty offenses in places where the United States had exclusive or concurrent jurisdiction.

In addition, these commissioners were authorized to take depositions, to issue attachments and conduct subsequent hearings in internal revenue matters, and to settle or certify the nonpayment of seamen's wages.

The U.S. commissioners were on call 24 hours a day, unless physically absent from their official station and not within reach, for the issuance of legal process and the conduct of bail hearings, which by law must be held without unnecessary delay following an arrest. When not conducting formal proceedings, the commissioners were oftentimes obliged to justify sureties, entertain motions, alter bail conditions, issue release and commitment orders and communicate with law enforcement personnel, defense attorneys, and court officials, as well as prepare the documents required in their duties such as docket sheets, orders appointing defense attorneys, status reports to U.S. attorneys and marshals, notices to probation officers, and receipts and accounts for fine and surety money.

Their full-time service, in the literal sense, is virtually without parallel in the past or present civil service. Yet, their salaried remuneration for this truly full-time service was statutorily limited to \$10,000 annually.

Based on a January 15, 1974, ruling by the U.S. Civil Service Commission, interpreting section 8332(i) of title 5, United States Code, those former U.S. commissioners now serving as U.S. magistrates, can receive only one two-hundred-and-sixtieth of a year in civil service retirement credit for each day in which the service performed by the then commissioners is either shown on fee vouchers submitted or verifiable through the docket sheets retained in the court clerk's records.

Unfortunately, however, for the 28 former U.S. commissioners who are now magistrates, the nature of their office required the performance of official duties on days other than those for which fees were claimed

and docket entries made. Often, the provided fees were of the single-fee nature—"for all services rendered after the presentation of the accused" or "in lieu of all other fees provided in this section" where petty offenders were tried and sentenced—and did not reflect the fact that the commissioner's efforts extended over more than a single day.

It is important that the committee note that these 28 former commissioners, in order to qualify for coverage under the Civil Service Retirement System, had to earn at least \$3,000 annually for 3 consecutive years after December 31, 1954. In view of the small size of the fees and the number of sequential proceedings which had to take place before any fee could be claimed, a commissioner would have to conduct an average of 300 to 400 proceedings a year to have reached the \$3,000 level.

Given the fact that these 28 magistrates met the above requirements during their service as U.S. commissioners, I believe that it is fair and equitable to assume that they must have performed the 260 days of service required for a full year's retirement credit during their appointments as commissioners.

Such an assumption, which H.R. 8822 would codify, is both just and necessary if we are to make the former commissioners' compensation commensurate with the volume of their workload, the time they were required to expend, and their service to the people of the United States.

Thank you, Mr. Chairman, for the opportunity to appear before the subcommittee in support of H.R. 8822.

Mr. WHITE. Thank you very much, Mr. Mineta.

In your testimony you state that the only reason those former U.S. magistrates don't receive full credit is due to a January 15, 1974 ruling by the U.S. Civil Service Commission.

Mr. MINETA. It is an administrative ruling.

Mr. WHITE. Have you checked into the ruling whether it could be altered without legislation?

Mr. MINETA. There is extensive conflict in the administrative office of the U.S. court relative to this, and the determination on the part of the Civil Service Commission was that they could not do it administratively.

The only way to relieve or rectify the situation is by legislative remedy.

Mr. WHITE. You have contemplated that those who would take this credit would have to make back contributions to the fund, I presume.

Mr. MINETA. That would be part of the rights for their share of the fund.

Mr. WHITE. Do you have any difficulty in finding out who these people are?

Mr. MINETA. There is a record of 28 individuals; and in fact, the administrative office of the U.S. court has those listings; and the fees and vouchers are all documented.

Mr. WHITE. What about determining what they made?

Mr. MINETA. In terms of their fees?

Mr. WHITE. Yes.

Mr. MINETA. That's available back to 1945 for the 28 magistrates.

Mr. WHITE. According to counsel there may be 28, but he says he thinks the bill might cover 700 commissions.

Mr. MINETA. I think that's sort of a strong-man approach in terms of the figure. I think what we are trying to do is remedy the situation for the 28 and not for all 700 who, at one time or another, might have served as a U.S. commissioner.

Mr. WHITE. Your bill pertains to those who are magistrates?

Mr. MINETA. Who have been magistrates.

Mr. WHITE. I will pass the questions to Mr. Harris at this time and come back to you.

Mr. HARRIS. I have no questions. I appreciate your coming before us on this bill. I think there is an unquestionable injustice that should be rectified.

Mr. WHITE. Counsel?

Mr. McCLUSKEY. No questions.

Mr. WHITE. Let me go back to the beginning. Let me make sure I understand what your bill does.

As to these 28 commissioners, you are saying that if they served prior to 1971 and they collected a fee on any one case—

Mr. MINETA. They way the system worked, they would receive a fee that might be anywhere around a \$4 fee for performing a certain task.

They would then file a voucher or that act would be shown in the court docket as having been performed.

So what they would now be serving under this bill is constructive credit, so to speak, for those years during which they did serve as a U.S. commissioner.

Mr. WHITE. You would determine if they received any fee records, also of whether they made \$3,000?

Mr. MINETA. Even if they didn't qualify under the \$3,000 for the 3 years under the 1974 or the prior law.

Mr. WHITE. Were you merely making a comment, or did this have anything to do with the computation when you said that if they served more than 1 day and received only one fee that that would be handled.

Mr. MINETA. If they were to perform a task, their fee would be for the whole process. In other words, if they had a number of steps to take for a certain act, that may cover more than, let's say, 1 or 3 or 5 days.

Yet, they will only be receiving one fee for that total amount of service that they performed, even though it might have been multiple days. Even though they file a docket or voucher for that one fee or that one service, it may really be multiple days they were engaged in this task.

Mr. WHITE. How are you going to give them that, according to the number of days?

Mr. MINETA. I am going on the assumption that they performed their 260 days of service in performance of their duties.

Mr. WHITE. You are not putting the burden on the magistrates if they served during a certain period of time. They did serve the 260 5 days.

Mr. MINETA. In the case of the commissioner who had acted by this bill, that because of their duties, that they would qualify or that they would be shown as having done more than what their vouchers or dockets would show.

Mr. WHITE. How would we answer for those who are no longer magistrates, the 668, 673 or 672 who are not magistrates? How do we answer them as to credits? Are we making a difference or basing it on those who continued in service?

Mr. MINETA. That's right; just on those who have continued and followed under it.

Mr. WHITE. How can we answer these other people who are not being covered by your bill, who did serve as a commissioner before but are no longer magistrates if they come back and say they want credit as though they had served the 260 days?

Mr. MINETA. I think the fact that commissioners did take themselves out of their prior employments states what have been and are now full-time magistrates, I think to me would indicate that their purpose or their vocational guidance or direction was really towards being——

Mr. WHITE. You would answer that they burned their bridges behind them?

Mr. MINETA. That's right.

Mr. WHITE. I presume some of those 672 probably did qualify anyway in number of days and there would be a small percentage involved who don't qualify. We will not consider them today.

I appreciate your bringing this to our attention. I think that probably the move to graduate, as it were, these commissioners into magistrate status was very wise on the part of the Government and gave them more professional and judiciary substance.

I think it well that you represent them in their behalf in their interest today, and I am sure the committee will look favorably on it. Thank you.

The next witness is Mr. Thomas Tinsley, representing the Civil Service Commission.

STATEMENT OF THOMAS A. TINSLEY, DIRECTOR, BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH, U.S. CIVIL SERVICE COMMISSION

Mr. TINSLEY. Mr. Chairman, you have my very short prepared statement; it can be placed in the record.

Mr. WHITE. Without objection. The entire statement will be placed in the record as though read and you may proceed in any manner you wish.

Mr. TINSLEY. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before your subcommittee to give the Commission's views on H.R. 8822.

The provision for crediting U.S. commissioner service was enacted in 1956. The law stipulates that a U.S. commissioner whose fees total \$3,000 or more annually in any 3 consecutive calendar-year period ending after 1954 was entitled to credit for prior and subsequent commissioner service on a W.A.E. (when actually employed) basis. Annual payments to commissioners ranged all the way from a \$4 fixed minimum to a \$10,500 statutory maximum. Only a small percentage of commissioners ever earned the requisite \$3,000 in annual fees in order to qualify as employees and obtain retirement credit.

H.R. 8822 would eliminate the annual compensation requirement of \$3,000. It would also allow full retirement credit (as opposed to W.A.E. credit) for U.S. commissioner service from the date of appointment to the date of separation whether or not the individual ever qualified as an employee under present law. The Commission would be strongly opposed to such action.

At the time the office of U.S. commissioner was abolished in 1968, there were over 700 commissioners under appointment. Only about 50 of these commissioners qualified under the law as employees. If H.R. 8822 is enacted, any or all of this group of former commissioners who did not qualify as employees but who later were given Federal appointments in some other capacity could receive full-time credit for retirement purposes for prior commissioner service.

When the Congress enacted Public Law 90-578, which established the office of U.S. magistrates, they inserted specific language to eliminate future difficulties in computing retirement benefits of magistrates who had prior service as U.S. commissioners. A 1967 Senate report on that legislation stated in pertinent part as follows:

Retirement coverage of U.S. commissioners is very limited. This amendment precludes interpretation of the Federal Magistrates Act to convert, after the fact, service as a commissioner that does not qualify for retirement benefits under present law into service that is credited for retirement purposes.

The Congress was concerned with preventing the limited number of U.S. commissioners who might be appointed as U.S. magistrates from obtaining credit to which they were not entitled. The provisions of H.R. 8822 are in direct opposition to the intent of Congress as expressed in that instance. H.R. 8822 would not only allow credit, after the fact, for service that did not qualify for retirement benefits, but would also allow full-time credit where eligibility exists only for credit on a W.A.E. basis.

In the Commission's opinion, enactment of H.R. 8822 would set a precedent which could be used in support of legislation to allow full-time credit for other types of employment which do not qualify as Federal employment or else do not qualify as full-time Federal employment.

At this point I would like to parenthetically state that very few individuals employed as commissioners on a fee-basis depended on that employment for their livelihood. That employment was more in the nature of a supplement to their full-time career. About two-thirds of them were practicing lawyers. A civil service annuity is computed on the basis of total years of service and high-three average salary. It would be a distortion of the retirement system to allow full-time credit for retirement purposes at a later high salary for service which did not even qualify as service for retirement until long after it was performed. As an extreme example for purposes of illustration, let us consider the hypothetical case of an individual who served as a commissioner for 5 years, during which time he performed 20 services requiring 15 minutes each, earned total fees of \$80, and, at the same time engaged in the private practice of law. In 1970, this individual was given a Federal appointment as an attorney and is still in service. If H.R. 8822 is enacted, he will be able to receive 5 years of credit towards retirement for a total of only 5 hours of service as a commissioner. If he retires in 1980 with an average salary of \$30,000, those 5 hours of commissioner service would be worth \$3,000 annually in annuity.

We have been informally advised that approximately 28 U.S. magistrates had prior commissioner service. All of these 28 qualified as employees during their commissioner service and are already entitled to W.A.E. credit. If only those 28 individuals were benefited by enactment of H.R. 8822, we estimate that the unfunded liability of the civil service retirement fund would be increased by approximately \$550,000. This amount would be amortized by 30 equal annual installments of \$34,100. However, we do not know how many former U.S. commissioners have subsequently become Federal employees in other positions and who would become eligible for credit under the provisions of the bill. Therefore we cannot estimate the possible cost of enactment.

SUMMARY

Very briefly, the statement points out the history of the crediting of U.S. commissioner service.

It goes back to 1956 and points out that while there are indications there were 700 of these commissioners, that only a small percentage of them ever earned the requisite \$3,000 annual salary required in order to qualify as employees for the purposes of obtaining retirement benefits.

As I read H.R. 8822, it goes slightly beyond what some of the discussion before the committee this morning has indicated, that in addition to eliminating a \$3,000 annual requirement, it would allow full retirement credit as opposed to the when actually employed-type credit.

It would allow that for not just the 28 commissioners who subsequently became magistrates but the law is written to be applicable to anyone who subsequently became covered under the retirement system in any type of position.

It gives them full-time credit for that service as a commissioner. In terms of the cost of this particular bill, if we were to take the minimum, the unfunded liability created by granting this coverage to those 28 individuals would be increased by approximately \$550,000.

However, I might point out to the committee that this is a most conservative estimate; we do not actually know how many individuals or former U.S. commissioners have subsequently become employees in some department or position other than as magistrates, so the potential under this bill I think goes far beyond the \$550,000; and even if that figure were to go up 50 to 60, the unfunded liability we are talking about is \$1 million which would double the annual installment payment and increase it to probably between \$75,000 and \$80,000 a year.

As to the cost in this particular instance, this bill, as I am sure the committee will note, is, in terms of other bills that have been before the committee, relatively minor.

I think our primary concern here is the precedent that this particular bill creates, particularly the precedent that would give an individual full-time credit for when actually-employed services.

There are literally thousands of people employed by the Federal Government each year on a when actually-employed basis.

From the very beginning, the retirement system has only provided coverage for those individuals on a when actually-employed basis.

There is a long history of this. This, for the first time, would say, regardless of how many days on this when actually-employed basis, even though you may have been employed outside the Government at the same time you would be given a full year's credit for each year that you had one actually-employed appointment.

That, Mr. Chairman, is the basic objection we have in terms of this piece of legislation. With that, Mr. Chairman, I will be glad to answer any of the questions you or the members of the committee may have.

Mr. WHITE. Well, I think, Mr. Tinsley, you spelled out your position.

What you are saying, then, is if a man or woman were a commissioner while practicing law and later this year, or say 5 years ago, entered into the Commerce Department and served as a civil service employee or anywhere as a civil service employee and accumulated their qualifying time, then under this bill, they would be able to reach back and pick up every year that they served or any portion of the year they served as a commissioner.

Mr. TINSLEY. We certainly would not find many cases where the individual may have only performed services 3 or 4 days during the year. It's possible.

If you take the extreme cases, you could have an individual who performed one service during the course of a year for a fee of \$4; and you would now give him 1 full year's credit under the retirement system.

Let's say that individual came into it sometime later. In view of the fact that the retirement benefit is based upon the average high-three salary, that one piece of service could be worth an astronomical amount of money to that individual.

I think an example we gave in our report is an individual who may have performed a service for 1 day who subsequently ended up his career with the Federal Government with a \$30,000 average salary. For that 1-day service, he is now going to be paid \$3,000 a year in annuity.

Mr. WHITE. If he were appointed on December 31 of some year and served 5 hours a day, then he would be able to collect credit for the entire year?

Mr. TINSLEY. Yes; a "when actually-employed appointment" runs for a period of time. Normally they would run for a year; however, in that type of appointment, the individual is only paid—and I am not talking about a commissioner—when he is called in to perform some service.

Mr. WHITE. One correction you would make even if we were to pass it would be to provide a span of time; in other words, if a man were to collect a year's service, then he should be able as a commissioner for a full year.

In other words, on the illustration I gave you, December 31, he should have a full year to the next December 31.

Mr. TINSLEY. If the appointment became effective on the 31st, that would be the beginning of the time he would count for. If the appointment were effective to the next year, he would get 1 full year's credit under this bill, even though he may have only worked 4 or 5 days.

Mr. WHITE. The law calculates on the basis of time periods of service?

Mr. TINSLEY. Not in when actually-employed situations. When an actually-employed situation is counted exactly the way we have counted this service—

Mr. WHITE. If this bill were to pass?

Mr. TINSLEY. Yes.

Mr. WHITE. Let me ask you this. Studying this situation, is there an injustice to these magistrates in the manner of computation of their time prior to their being a magistrate?

Mr. TINSLEY. Going back to the original coverage of these people, I don't think at that time there was any injustice.

They were being treated fairly. There were many people whose credit for retirement could not be more than the given 260 or 313. This determination was not made administratively but was contained in the law.

When an actually-employed individual was given any type of credit for service, it was on a day-by-day basis.

What would we do to have the individual establish that credit? There have normally been payroll and other records in the rest of the Federal service. There would not be pay-roll records of this type of service.

The question arose as to how you certified that these individuals performed the service. I believe the arrangements made with the administrative office, the United States Courts, was one of "You can certify this service, and we will accept your certification. We do expect you to go to the vouchers that were used in paying these individuals; and if you do that, we will accept that certification rather than requiring the payroll records as we would normally."

Mr. WHITE. Well, how, when a person applies for credit, whether a commissioner or magistrate, does he apply on the basis of the amount of money he received, or by the number of days he worked?

Mr. TINSLEY. The credit would be by the number of days.

Mr. WHITE. The vouchers would be some corroboration?

Mr. TINSLEY. There would be some corroboration on such-and-such a date, the amount of money, except for the fact it would have to be \$3,000 a year by law. Other than that, the minimum had nothing to do with the credit for the service.

Mr. WHITE. Are you agreeable to the elimination of the \$3,000 barrier that Mr. Mineta has spoken of if we retain the other portion of the law?

Mr. TINSLEY. The only problem that would create—and I think here again I am relying on a review of the legislative history—I think the only intention was that the Congress was attempting to find some way of where, in certain areas of the country, some of these individuals might only provide services only 4 or 5 days a year.

We are talking back when \$4 or \$5 was a lot of money. Congress was looking for a way of saying, "We want people to just come in and be available to perform a service in some of these smaller localities, and we've looking for someone who would give us a hand."

I think the most of these people made, if the records of the U.S. courts are correct, was about \$10,000 in any one year.

Mr. WHITE. That was the limit?

Mr. TINSLEY. Yes. I think they said, "Well, we will take some figure between \$4 and \$10,000." \$3,000 was the figure chosen.

Mr. WHITE. Were the vouchers based on time put in or the fund?

Mr. TINSLEY. There was a system set up and there is a combination of both. I believe primarily they came out of the fines that were levied or in part were similar to a count cost system that you have when you go before a magistrate.

Mr. WHITE. Suppose the judge happened to be fair and he did not think a case existed against a defendant and found him not guilty or did not bind him over to a grand jury.

In that instance, where he did not bind him over, what happened to his fee?

Mr. TINSLEY. This was one of the reasons, Mr. Chairman, that the law was subsequently amended and Congress permanently established the position of U.S. magistrate and divided its role and its duties gave it the flexibility to operate under the courts. This was one of the very reasons for some of the reforms there.

Mr. WHITE. I am worried about the man before that. What happened to the commissioner who did not assess a fine against a defendant; what happened to his fee; did he get no fee?

Mr. TINSLEY. I am not certain.

Mr. WHITE. That would be critical as far as determining that level.

Mr. TINSLEY. There would be some type of fee.

Mr. WHITE. It would reduce?

Mr. TINSLEY. That's right.

Mr. WHITE. There is a conflict of interest in the assessing of a fine.

Mr. TINSLEY. You are probably right and that was one of the reasons for reform here.

Mr. WHITE. The \$3,000 limit might be punishing a man who is trying to do his reasonable duty.

Mr. TINSLEY. It certainly could.

Mr. WHITE. Thank you. Mr. Mineta?

Mr. MINETA. That's the point of this whole thing. The fact that we have commissioners who, as I said, worked a multiple number of days but they only received credit if they had only worked 1 day for some act, that, in itself, is a just inequity to the commissioner at that time.

Mr. Chairman, I think there is some correspondence that has gone on between the Administrative Office and the Civil Service Commission relative to it. I have submitted it to Ms. Rubin, who is the actuary for the Commission, to determine the cost involved; and it was based on the 28 rather than the hypothetical 700 that might possibly be ineligible.

I think that if there is an "open door" so to speak or "back door" that might be there, that we ought to write the legislation to make sure that that back door is closed and the intent of this is to qualify those who are now serving as magistrates, having been formally U.S. commissioners, and to correct that inequity.

I think, as you point out, that \$3,000 was a very arbitrary figure, Mr. Tinsley. I think that is one of the other reasons for the need of this legislation.

Thank you, Mr. Chairman.

Mr. WHITE. Mr. Jenrette?

Mr. JENRETTE. Would you still be opposed to the bill if we changed it?

Mr. TINSLEY. It would improve the bill to change it and point that out.

Certainly there is some indication there; and in reviewing some of the service of these 28 individuals—I don't know whether this came from the Office of the U.S. Courts or where—but the list that we have does give some indication that some of these individuals were, at least in terms of salary and voucher days, spending a considerable amount of time prior to the enactment of that legislation.

This one gentleman, in this particular year, spent over 100 voucher days; another over 300. These individuals, for the most part, we can assume to have stayed within the system for a period of time and then subsequently became magistrates.

So, for some of these 28, I guess you could argue that they were spending almost a full time beforehand. Then they continued on as a magistrate afterwards. They were not the individuals, who, although there were a few of them, that only spent 9 days. There are not that many.

In terms of giving them the year's credit for that service that was performed for less than a year, here again I still have a problem with the precedent that's being established because with the thousands of when actually employed individuals that this Government is confronted with—and you can find them in almost any agency, IRS uses part-time when actually employed people in large numbers for just very short periods of time during the year; the Agricultural Department uses them; the Census Bureau uses them sometimes—I feel that once you have broken this rule that has been there as an integral part of the system from the beginning, that you are suddenly going to be confronted with others who will describe their positions as being just as unique as this one and their service just as valuable and dedicated and say, "Well, you have established the precedent; you have given it to them. We feel we are entitled to it, too."

That's basically my problem with it.

Mr. JENRETTE. Could we not formulate a program whereby the individuals to whom you refer—IRS and AG—would have to work so many dates before it could be counted a year; regardless of what calendar year it was, in order to make 5 years or to make 2 years of service?

Mr. TINSLEY. That is exactly what the when actually employed concept does. That's why, in this particular law, not this one before us, but in the Retirement Act, there is the significance of the 260 and the 313, those were the number of actual working days in a year, in a 360-day calendar year. It was and is that for each day you work, we will give you credit, 1 day's credit. Two hundred sixty or three hundred thirteen is equal to 1 year.

Mr. JENRETTE. But a commissioner in the old times had to be on call all the time.

Mr. TINSLEY. That is right.

Mr. JENRETTE. Are you saying he should not be given benefits for a possible inconvenience to any other work he might have?

It would certainly apply to nine to five, even though it's nine to two part time; but one that was on a full-time call at 2 o'clock in

the morning or anything of this nature should not be given additional consideration.

Mr. TINSLEY. Not being that familiar with the exact situation and taking a look at the frequency of the services that would have been performed by most of these individuals, I don't think that in most cases that the on-call situation was all that bad to a point where the individual was afraid to leave town for fear that something might come up.

I think even in the subsequent legislation that established the magistrate system, even there they indicated that it was the service, that the on-call was not that strict in terms of him being there, that when he was available, he would perform these services.

Again, here I have that legislative history to rely on; and many times when you get this far away from the point of time the services were performed and you are looking at it in a different context, it was altogether different then.

Mr. JENRETTE. Thank you.

Mr. WHITE. Mr. Tinsley, let me ask you a few more questions.

What is the minimum salary a person can make in the civil service and still draw retirement?

Mr. TINSLEY. There is no real minimum salary, Mr. Chairman. In fact, we will give an individual credit for services in a Federal position that is not even covered by salary under the civil service retirement system.

Mr. WHITE. In civil service it is based on service as opposed to salary?

That is the comment of Mr. Mineta. In some degree the magistrates who are putting in time had a set salary.

Mr. TINSLEY. They said \$3,000 arbitrarily.

Mr. WHITE. On the Hill we have a minimum of \$1,200 that a person can draw all the way up to \$36,000 or something like that.

Mr. TINSLEY. The only reason I can see for the \$3,000 is they were looking for some figure to weed out certain cases that were very small in terms of frequency-type of service performed situations.

In some of the other situations where we do have salary considerations, it's usually situations such as in health and life insurance where the individual has to be making enough to be able to pay for the insurance. But for the most part, the salary is not the critical factor in terms of coverage.

Mr. WHITE. Now all magistrates, I understand, have to be lawyers, am I correct? They have to have a law background.

Mr. TINSLEY. There is one exception in the law that permits, in certain locations in the country where it would be next to impossible to obtain someone who is a fully qualified and trained lawyer or a member of the bar, some leeway for that exception.

Mr. WHITE. That is an exception and not the standard rule?

Mr. TINSLEY. The standard rule is to be a member of the bar. He has to be a member admitted to practice before the highest court in the State.

Mr. WHITE. If an attorney was employed by the Government, how much leeway on the average would he have?

Mr. TINSLEY. As a magistrate?

Mr. WHITE. No, sir, as a low-ranking attorney with the Treasury, Securities and Exchange Commission, or Commerce.

Mr. TINSLEY. I think you would have difficulty comparing a magistrate with the average attorney position in the Government. I think the position that you would have to compare this to if you were going to compare it would be the administrative law judge.

Mr. WHITE. How much would they make per hour?

Mr. TINSLEY. By the hour, I don't know. Most administrative law judges today, after they have been in the administrative law field for a year or two, are usually drawing GS-15 salaries, which is getting close to \$36,000 a year.

Mr. WHITE. Is it possible they were being underpaid for the time they put in?

Mr. TINSLEY. If I am looking at 1975 dollars compared to 1945 dollars, it is hard to conceptualize how much \$4 was worth. If you are asking about today's market and salary levels, you are insulting them.

Mr. WHITE. When was the change made?

Mr. TINSLEY. 1967, I believe.

Mr. WHITE. I thought it was recently.

Mr. TINSLEY. I think the magistrates go back into the 1940's, and at that time the ground rules were set up. I think the minimum fee for the service was \$4.

Mr. MINETA. Mr. Tinsley, it is possible, is it not, that a person would be able to earn the \$10,500 maximum and yet not have 260 voucher days in terms of qualifying; and yet he would be at his maximum in terms of compensation. In looking at the figures or the records, Mr. Chairman, you know many of them had 150 or 70 voucher days.

That again does not reflect the time that they really spent in the job because though they would be able to only submit a voucher day, that one act might have taken them 3 or 4 days; but they were only paid for that one service as a total service from the beginning to end of the process.

That might have been 4 or 5 days, and they only got credit for that 1 day.

Mr. HARRIS. Did it ever work the other way, where a person could have taken half an hour to do it?

Mr. MINETA. Sure, sure. I think that's the case that Mr. Tinsley is citing.

He is saying why should a person who may be spending 14 minutes to do one thing get credit for that whole year.

Mr. TINSLEY. Mr. Chairman, if this will help, I know in my notes here that the latest information we do have on commissioners is that their earnings—or at least until there is a pay increase—since last April, were \$30,000 a year.

Mr. MINETA. Their salary is \$35,000 now.

Mr. WHITE. Mr. Counsel?

Mr. McCLUSKEY. Mr. Tinsley, I want to clarify some things.

You say that the bill would be less objectionable if we were to clarify that bill is the limited to the 28 magistrates that are presently serving.

Mr. TINSLEY. Yes, not a wide-open provision.

Mr. WHITE. Do you have an estimate of the cost of just the 28?

Mr. TINSLEY. That is \$550,000.

Mr. McCLUSKEY. You have no serious objection to just doing away with the \$3,000 minimum to qualify as an employee?

Mr. TINSLEY. I don't know how much difficulty you would run into administratively in attempting to verify this service in the past.

They had that \$3,000; that is some help unless there is some other administrative problem on any of these; and it was to be confined to these 28 magistrates.

I have no problem because I think most of these individuals did not have 260 days. We are in excess of \$3,000. It would only be a few that were not.

Mr. McCLUSKEY. Would you address yourself to the limitation of 313 days?

Mr. TINSLEY. The significance of those days is there was a change in law back there in 1945 in terms of the number of days the individual worked.

The normal number of work days prior to that date was 313 days out of the 365; and then moving into the 20th century, it was lowered to 160 days; and they began to give people benefits. That is the significance of that date.

Mr. McCLUSKEY. Thank you, Mr. Chairman.

Mr. WHITE. Thank you, Mr. Tinsley. We appreciate your coming. There are no further witnesses and the subcommittee is adjourned until next Thursday at 9 a.m. in this room.

[Whereupon, at 10 a.m., the hearing was adjourned.]

[The statement which follows was received for inclusion in the record.]

UNITED STATES MAGISTRATE,
EASTERN DISTRICT OF NEW YORK,
Brooklyn, N.Y., October 21, 1975.

HON. RICHARD C. WHITE,
Chairman, Subcommittee on Retirement and Employee Benefits, Rayburn House
Office Building, Washington, D.C.

HONORABLE SIR: I thank you for your very kind invitation to attend and testify in connection with the hearings on HR 8822, scheduled for November 4th and 6th 1975. As a result of previous commitments at the Court, I am unable to appear in person and therefore would respectfully request that the enclosed five copies of my statement be offered for the record.

I regret exceedingly my inability to appear in person to testify before your honorable committee and again take this opportunity to express my appreciation for your consideration of the matter above referred to.

Respectfully yours,

MAX SCHIFFMAN,
U.S. Magistrate, Eastern District of New York.

STATEMENT OF MAX SCHIFFMAN, U.S. MAGISTRATE, EASTERN DISTRICT OF
NEW YORK, BROOKLYN, N.Y.

My name is Max Schiffman. I am presently serving as a full-time United States Magistrate in the Eastern District of New York. I represent myself as a person vitally interested in this presentation.

Prior to my appointment as a United States Magistrate, effective January 1, 1971, I served as a part-time United States Commissioner in the very Court I am now working in. The appointment as United States Commissioner was effective as of the 27th day of February 1959 and I acted in that capacity until my assignment as a full-time Magistrate.

There were two United States Commissioners who functioned on an alternate weekly basis. The purpose of this arrangement was to give the United States Commissioner not on duty to have an opportunity during the period when he was not serving, to take care of the necessary clerical and administrative duties connected with the office. These clerical duties were performed by my secretary, who received no compensation from the Government for her services and of course, I had to pay her. Not only was the United States Commissioner active during the week in which he was on full-time duty, but the office was actively engaged in completing the very extensive clerical work generated by the proceedings which took place before the Commissioner, both in the office, at home during all hours of the day and night, on weekends and in the regularly schedule appearances at the United States Courthouse.

Under the system prevailing during the time that I was United States Commissioner, the Administrative Office provided for the filing of reports which would indicate the functions performed by the staff of the Commissioner outside of the Court and he was to be given credit for each recorded duty on any day other than the actual hearing of the matter in the Courtroom or elsewhere. As an economic fact of life, it was impossible for a Commissioner to make an actual record of every duty performed. The reason for this is very simple. We were not paid for secretarial help and it was impossible to load the secretary with the work necessary to fill out the various papers and mark the consequent records in order to get full credit for work actually performed.

As a result, the only records which were kept, were the basic statistics required for the performance of and compliance with the directives of the Administrative Office in connection with essential record keeping.

The Clerk of the District Court did not keep or maintain the records of the United States Commissioner. All books and records, docket books, docket pages and entries thereon, were accomplished by our non-government paid secretaries. Therefore, it is logical and factual, that we kept the records down to a minimum. Thus we were never able to show all the work that was actually being done outside of the regularly recorded items.

As United States Commissioners, we were on call twenty-four hours a day. We were available at all times to the United States Attorney and other Government agencies for the performance of our duties.

The Congress recognized this fact, for at the present time, a part-time United States Magistrate, who earns \$100 a year, receives a full year of creditable civil service. On the other hand, the United States Commissioner did not have the benefit of such recognition.

I respectfully refer this Subcommittee on Retirement and Employee Benefits, to the remarks made by the Honorable Norman Y. Mineta of California on July 22, 1975 at page E 4033 and E 4034 of the Congressional Record, to which I fully subscribe.

I respectfully request your favorable consideration of this legislation.

The first part of the book is devoted to a general survey of the history of the world, from the beginning of time to the present. The author discusses the various stages of human development, from the earliest forms of life to the modern era. He also touches upon the different civilizations and cultures that have shaped the world as we know it today.

In the second part, the author delves into the details of the various civilizations and cultures that have emerged throughout history. He examines the social, political, and economic structures of these societies, as well as their art, science, and philosophy. This section provides a comprehensive overview of the human experience across different time periods and geographical locations.

The third part of the book focuses on the modern world, discussing the challenges and opportunities that face humanity in the twenty-first century. The author explores the impact of technology, globalization, and environmental issues on our lives. He also offers his perspective on the future of the world and the role of individuals in shaping it.

Throughout the book, the author uses a clear and engaging writing style to present his ideas. He includes numerous examples and references to support his arguments, making the text both informative and accessible. The book is a valuable resource for anyone interested in the history and future of the world.

The book is published by [Publisher Name] and is available in both print and digital formats.

RETIREMENT CREDIT FOR U.S. COMMISSIONERS

THURSDAY, NOVEMBER 6, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS,
Washington, D.C.

The subcommittee met at 9:05 a.m., in room 309, Cannon House Office Building, Hon. Richard C. White (chairman of the subcommittee) presiding.

Mr. WHITE. The subcommittee will come to order.

The subcommittee has reconvened this morning to consider the merits of H.R. 8822, a bill introduced by Congressman Norman Y. Mineta, of California. A markup on this bill is scheduled for Monday, December 1.

This bill seeks to amend sections 8331 and 8332 of title 5, United States Code, with respect to the creditable service of U.S. commissioners for purposes of civil service retirement.

Presently, under section 8331(1)(E) of title 5, the definition of "employee" includes a U.S. commissioner whose total pay for services performed as a commissioner is not less than \$3,000 in each of the last three consecutive calendar years ending after December 31, 1954.

H.R. 8822 would, if enacted, allow full credit for U.S. commissioners service from the date of appointment until the date of separation as a commissioner whether or not the individual ever qualified as an employee under the requirements of present law during such service.

Our witness this morning will be the Honorable Francis J. Carr, representing the National Council of United States Magistrates.

Please proceed, sir.

STATEMENT OF HON. FRANCIS J. CARR, NORTHERN DISTRICT OF CALIFORNIA, NATIONAL COUNCIL OF U.S. MAGISTRATES

Judge CARR. Mr. Chairman and members of the subcommittee, H.R. 8822 provides for a now long-overdue minor correction in the civil service retirement subchapter III defining creditable service for 25 former U.S. commissioners who are now serving as U.S. magistrates with no break in service.

The National Council of United States Magistrates appreciates the opportunity to explain that equity and fairness require an amendment to provide that those 25 magistrates be credited for the purpose of subchapter III with all the services performed by them during each year of service as U.S. commissioners instead of the present one two-hundred-sixtieths of a year for each day on which they performed services as U.S. commissioners after June 30, 1945. As Congressman Mineta said on introducing H.R. 8822 July 22, 1975:

U.S. Commissioners were on call 24 hours a day for the issuance of legal process and the conduct of bail hearings, which by law must be held without unnecessary delay following an arrest. When not conducting formal proceedings, the Commissioners were oftentimes obliged to justify sureties, entertain motions, alter bail conditions, issue release and commitment orders, and communicate with law enforcement personnel, defense attorneys and court officials; as well as prepare

the documents required by the Administrative Office of the United States Courts such as docket sheets, orders appointing defense attorneys, status reports to the attorneys and marshals, notices to probation officers; and receipts and accounts for fines and bail deposits.

To summarize the problem facing the 25 to 28 former commissioners, who are now U.S. magistrates and have been since 1971, we need only note that the guidelines used by the retirement bureau of the Civil Service Commission only take cognizance of "the total number of fee and service days evidenced" by the accounts and dockets on file. However, the nature of the work performed by U.S. commissioners was such that performance of official duties was required on days other than those for which fees were claimed and docket entries were made.

For example, a commissioner handling preliminary proceedings to discharge an accused person, or to bind the accused over to answer in the district court, was entitled to a single fee for all services performed after the initial appearance of the accused.

Or, as a second example, a commissioner who tried and sentenced a defendant for a petty offense would earn a single fee in lieu of all other fees provided by section 633(8) of title 28, United States Code. See generally, Manual for United States Commissioners, as revised September 1948, by the Director of the Administrative Office of the U.S. Courts.

The actual procedures and duties involved could and frequently did involve efforts extending over several days.

It is interesting to note on page 31 of the manual that after explaining that \$2½ is the fee specified "for all services rendered by the commissioner in the case prior to the presentation of the defendant including the issuance of the warrant of arrest or summons, and the preparation of the complaint," the manual goes on to say, "Of course only the commissioner with whom the complaint was originally filed is entitled to this fee."

I mention that to show that if someone reached the \$3,000 amount, they would have had \$2½ and \$4 and others had to perform services on many days to get those kind of amounts totaled under civil service. That section requiring \$3,000 for 3 years.

Is it any wonder that so few commissioners did not have the time nor were they willing to incur the expense of filing the forms AO-124? From my experience with commissioners who preceded me in office, and my personal review of their records and the forms they filed, I learned much about how many actions and transactions were never recorded. My predecessor in office only filed the essential documents, and accounts of fines, and let much evidence of other activities go unrecorded on an AO-124 or any other form. The true volume of work was never known to the administrative office.

Nor did the clerk of the district court have any count of what had been done in Monterey.

The 25 magistrates affected by the amendment are now and, previously, have been paying into civil service retirement. That is an assumption I made on the basis of magistrates paying into civil service retirement since they've been appointed magistrates. I would suggest to the subcommittee that any information about just what happened in those years, whether they have paid into civil service retirement or whether they were just in law offices and paid no attention to social security or any other benefits, could be obtained from the administrative office, of course.

I think that is a crucial point and I don't have anything that I can reach for to tell the subcommittee just exactly what they did, but certainly they now, and have been previously—and all of them for 5 years—paying into civil service retirement.

When the Congress corrects the inequity, all 25 will be required to make a lump sum payment into the civil service retirement fund of an amount necessary to cover any additional period of creditable service provided by H.R. 8822. That is service until they were appointed U.S. magistrates in, roughly, 1971.

The attached exhibits marked A, B, and C were prepared by the Administrative Office of the U.S. Courts. I gave to your counsel a revised exhibit A which brings it up-to-date as of yesterday, which I received the assistance of the administrative office of the court on, also.

Exhibit D, the Form AO-124 as attached to my statement and referred to above, was, most likely, available from the administrative office, but failed to mention the necessity for completing the AO-124. I think there was only one commissioner that took time to fill it out. It was an application probably put out by a bulletin of the administrative office to show service credits for days on which they did not get a fee or did not have a completed filing.

But the Manual for United States Commissioners failed to mention, let alone emphasize the need for completing the application for service credit.

The National Council is grateful to the members of the subcommittee for this hearing. I will gladly answer any questions the members might wish to ask.

Thank you.

[The attachments which were submitted with Judge Carr's statement follow:]

EXHIBIT A

Magistrate	Birthdate	Present salary
Alex Akerman, Jr.	Jan. 12, 1910	\$31,500
James T. Balog	May 12, 1932	31,500
Frank J. Baskin	Apr. 23, 1907	15,000
George E. Burgess	July 28, 1930	31,500
Dudley R. Carr	Oct. 17, 1919	3,323
Robert E. Cooper	Aug. 10, 1916	31,500
John R. Countiss	Aug. 26, 1927	15,000
Elmer M. Enstrom, Jr.	Sept. 27, 1915	(1)
Lloyd R. Fayling	May 5, 1917	3,987
William R. Ford	June 18, 1916	3,323
Paul Game, Jr.	June 13, 1930	31,500
John B. Garrity	Jan. 6, 1920	5,539
Richard S. Goldsmith	Sept. 5, 1911	31,500
Tullio G. Leomporra	May 12, 1923	31,500
Robert W. McCoy	Mar. 11, 1924	31,500
Frederick A. Meatyard	Aug. 18, 1913	15,000
Glenn B. Neumeyer	Dec. 27, 1925	(2)
Eleanor C. Oakley	Jan. 26, 1909	13,959
Charles L. Rudd	July 3, 1907	12,600
Robert R. Sanders	Oct. 12, 1935	3,485
Max Schiffman	Sept. 12, 1910	31,500
Gilbert R. Swink	Feb. 1, 1913	31,500
Lee D. Thames	July 24, 1936	(2)
Darrell D. Thomas	Sept. 10, 1931	11,079
Lek von Kaesborg	Mar. 10, 1925	13,959
William P. Wallace, Jr.	Aug. 9, 1905	13,959
Bestor F. Witter	Dec. 21, 1911	5,539
Cameron W. Wolfe ³	Aug. 14, 1910	33,200

¹ Retired.

² Resigned.

³ Presently a bankruptcy judge.

EXHIBIT B

Magistrate	Fees	Voucher days
1946:		
Cameron Wolfe	\$2,687.49	143
Frederick Meatyard		
1947:		
Cameron Wolfe	8,585.94	151
Frederick Meatyard	303.00	20
1948:		
Cameron Wolfe	8,794.89	132
Frederick Meatyard	647.25	43
1949:		
Cameron Wolfe	9,892.74	190
Frederick Meatyard	759.50	47
1950:		
Cameron Wolfe	10,293.81	164
Frederick Meatyard	1,043.62	53
1951:		
Cameron Wolfe	7,731.06	89
Frederick Meatyard	1,910.17	71
1952:		
Cameron Wolfe	9,376.50	48
Frederick Meatyard	1,714.21	81
1953:		
Cameron Wolfe	9,376.50	93
Frederick Meatyard	1,744.63	79
1954:		
Cameron Wolfe	9,439.95	95
Frederick Meatyard	2,215.67	86
1955:		
Cameron Wolfe	9,630.29	84
Frederick Meatyard	8,237.94	93
Lloyd R. Fayling	111.25	21
1956:		
Cameron Wolfe	8,998.85	72
Frederick Meatyard	9,381.35	89
Robert E. Cooper	2,851.50	38
Lloyd R. Fayling	271.25	21
Charles L. Rudd	112.17	9
1957:		
Cameron Wolfe	10,500.00	124
Frederick Meatyard	10,500.00	111
Robert E. Cooper	6,957.07	88
Lloyd R. Fayling	1,367.65	24
John B. Garrity	1,181.90	26
Charles L. Rudd	835.50	57
1958:		
Cameron Wolfe	10,500.00	79
Frederick Meatyard	10,500.00	131
Robert E. Cooper	7,047.34	81
Elmer M. Enstrom, Jr.	1,788.00	44
Lloyd R. Fayling	1,336.00	23
John B. Garrity	1,625.00	27
Charles L. Rudd	1,459.09	73
Gilbert R. Swink	2,527.67	92
William P. Wallace, Jr.	1,111.33	54
Bestor F. Witter	683.00	79
1959:		
Cameron Wolfe	10,500.00	121
Frederick Meatyard	10,500.00	99
Robert E. Cooper	8,176.66	116
Elmer M. Enstrom, Jr.	633.00	9
Lloyd R. Fayling	2,422.00	20
William R. Ford	976.00	150
John B. Garrity	1,470.00	31
Charles L. Rudd	658.40	33
Max Schiffman	7,259.00	119
Gilbert R. Swink	3,796.66	137
William P. Wallace, Jr.	3,598.67	140
Bestor F. Witter	1,436.00	51

EXHIBIT B—Continued

Magistrate	Fees	Voucher days
1960:		
Cameron Wolfe	\$10,500.00	109
Frederick Meatyard	10,500.00	192
Robert E. Cooper	6,004.00	87
Lloyd R. Fayling	1,724.00	9
William R. Ford	1,848.00	¹ 50
John B. Garrity	4,361.00	91
Charles L. Rudd	706.00	39
Max Schiffman	9,718.00	125
Gilbert R. Swink	3,353.33	134
William P. Wallace, Jr.	3,932.33	161
Bestor F. Witter	1,648.00	54
1961:		
Cameron Wolfe	10,500.00	110
Frederick Meatyard	10,500.00	103
Dudley R. Carr	352.00	16
Robert E. Cooper	5,602.05	102
Lloyd R. Fayling	2,008.00	23
William R. Ford	3,196.00	¹ 50
John B. Garrity	3,339.00	74
Charles L. Rudd	1,006.00	65
Max Schiffman	9,472.00	135
Gilbert R. Swink	3,650.34	151
Lee D. Thames	726.00	5
William P. Wallace, Jr.	3,123.00	134
Bestor F. Witter	9,082.00	100
1962:		
Cameron Wolfe	10,500.00	100
Frederick Meatyard	10,500.00	85
Frank J. Baskin	1,712.00	43
Dudley R. Carr	1,148.00	45
Robert E. Cooper	6,138.00	103
Lloyd R. Fayling	2,740.00	41
William R. Ford	2,186.00	¹ 50
John B. Garrity	3,532.00	88
Charles L. Rudd	1,421.00	74
Max Schiffman	10,500.00	154
Gilbert R. Swink	3,488.00	167
Lee D. Thames	2,008.00	28
Lek von Kaesborg	232.00	9
William P. Wallace, Jr.	4,180.67	173
Bestor F. Witter	10,500.00	107
1963:		
Cameron Wolfe	10,500.00	103
Frederick Meatyard	10,500.00	74
Frank J. Baskin	5,683.00	147
Dudley R. Carr	2,512.00	102
Robert E. Cooper	7,988.00	91
John R. Countiss	2,942.00	86
Lloyd R. Fayling	4,098.00	70
William R. Ford	2,480.00	¹ 50
John B. Garrity	3,581.00	84
Robert W. McCoy	2,894.00	132
Charles L. Rudd	1,399.00	81
Max Schiffman	9,000.00	162
Gilbert R. Swink	3,347.00	163
Lee D. Thames	1,766.00	22
Lek von Kaesborg	3,198.00	49
William P. Wallace, Jr.	3,875.00	142
Bestor F. Witter	9,486.00	101

¹ Estimate.

EXHIBIT C
FEE EARNINGS AND DAYS ON WHICH SERVICES PERFORMED BY FORMER U.S. COMMISSIONERS IN THE YEARS 1964-70

U.S. magistrate	Year appointed commissioner	1964				1965				1966				1967			
		Fees	Voucher Days	AO-124 days	Fees	Voucher Days	AO-124 days	Fees	Voucher Days	AO-124 days	Fees	Voucher Days	AO-124 days	Fees	Voucher Days	AO-124 days	Fees
Alex Akerman, Jr.	1965				\$10,500	151		\$10,500	33		\$10,498	84		\$10,498	84		
James T. Balog	1967										1,899	148		1,899	148		
Frank J. Baskin	1962		260		8,870	170		10,500	170		8,358	194		8,358	194		
George E. Burgess	1965				9,928	260		10,500	84		10,500	27		10,500	27		
Dudley R. Carr	1961	5,392	205		10,500	99		10,500	241		10,500	260		10,500	260		
Robert E. Cooper	1966	7,918	86		3,523	115		5,111	59		10,500	174		10,500	174	24	
John R. Countiss	1963	3,706	115		10,500	156	68	10,500	161		5,334	174		5,334	174		
Elmer M. Countiss, Jr.	1958	6,557	102		4,310	68		9,309	120		2,942	147		2,942	147		
Lloyd R. Fayling	1955	2,668	72		2,048	97		3,504	138		6,862	140		6,862	140		
William R. Ford	1959	2,836	60		2,950	126		2,893	158		3,011	150		3,011	150		
Lloyd R. Ford	1962	3,312	167		2,309	69		3,870	93		3,337	110		3,337	110		
Paul Game, Jr.	1957	3,782	88		10,500	224		10,500	218		10,500	222		10,500	222		
John E. Garrity	1964	10,500	168					1,169	144		2,437	96		2,437	96	45	
Tullio G. Leomporra	1966				3,582	121		3,493	107		3,340	114		3,340	114		
Robert W. McCoy	1963	4,012	207		10,500	93	139	10,500	81		10,500	60		10,500	60	181	
Frederick A. Mealyard	1947	10,500	69	152	6,538	124		3,656	36		4,922	44		4,922	44		
Glenn B. Neumeyer	1965										5,276	119		5,276	119		
Eleanor C. Oakley	1957				10,500	102		10,500	99		7,494	113		7,494	113		
Charles L. Rudd	1956	10,500	100								5,642	133		5,642	133		
Robert R. Sanders	1967				8,752	154		8,034	178		6,656	142		6,656	142		
Max Schiffman	1959	10,500	160	17	3,078	141		2,989	116		3,043	148		3,043	148		
Gilbert R. Swink	1958	3,292	145					6,442	60		2,208	39		2,208	39		
Lee D. Thames	1966				5,939	37		3,626	60		7,061	59		7,061	59		
Lee D. Thomas	1961	3,258	36					4,848	64		1,748	39		1,748	39		
Leck von Kaesborg	1962	4,740	65		5,740	157		4,321	172		4,772	185		4,772	185		
William P. Wallace, Jr.	1958	3,727	144				10	6,930	84		3,934	64		3,934	64		
Bester F. Wither	1958	8,800	95		10,500	85		10,500	87		10,500	52		10,500	52		
Cameron W. Wolfe	1946		79														

¹ Figure based only on a portion of the calendar year.

EXHIBIT C—Continued

U.S. magistrate	1968			1969			1970			Current salary as magistrate
	Fees	Voucher days	AO-124 days	Fees	Voucher days	AO-124 days	Fees	Voucher days	AO-124 days	
Alex Akerman, Jr.	\$10,500	109	---	\$10,500	133	---	---	---	---	\$11,692
James T. Balog	8,946	260	---	10,500	260	---	---	---	---	30,000
Frank J. Baskin	7,889	191	---	10,196	174	---	---	---	---	8,318
George E. Burgess	---	31	---	---	---	---	---	---	---	30,000
Dudley R. Carr	10,500	233	---	10,500	209	200	---	---	---	6,655
Robert E. Cooper	7,500	288	---	10,500	96	---	---	---	---	30,000
John R. Countiss	10,500	88	26	10,500	96	31	---	---	---	12,616
John R. Countiss	6,154	164	---	8,732	155	---	---	---	---	12,616
Elmer M. Enstrom, Jr.	6,246	4	---	8,585	15	---	---	---	---	12,616
Lloyd R. Faving	2,852	79	---	8,966	135	---	---	---	---	3,327
William R. Ford	10,500	260	---	10,500	223	---	---	---	---	6,655
William R. Ford	2,881	156	---	10,500	130	---	---	---	---	30,000
Paul Gamie, Jr.	2,768	117	---	5,922	144	---	---	---	---	3,881
John B. Garrity	---	134	---	10,500	236	---	---	---	---	30,000
Richard S. Goldsmith	10,500	136	---	10,500	195	---	---	---	---	30,000
Tullio G. Leonporra	3,884	146	42	4,423	158	48	---	---	---	30,000
Robert W. McCoy	8,039	146	---	10,500	109	---	---	---	---	30,000
Frederick A. Mealyard	7,630	52	128	9,858	159	---	---	---	---	8,318
Glenn B. Neumeyer	3,918	139	---	3,220	59	130	---	---	---	12,616
Eleanor C. Oakley	9,790	166	---	7,034	139	---	---	---	---	12,616
Charles L. Rudd	10,500	145	---	10,500	113	---	---	---	---	9,983
Robert R. Sanders	3,464	39	---	3,086	100	---	---	---	---	3,327
Max Schiffman	7,650	149	---	10,464	224	---	---	---	---	30,000
Gilbert R. Swink	3,857	172	---	1,133	160	---	10,462	---	---	30,000
Lea D. Thomas	3,270	---	---	5,478	150	---	4,856	---	---	1,639
Darrell D. Thomas	2,664	52	---	4,278	51	---	4,152	---	---	3,327
Lek von Kuesborg	1,872	58	---	2,862	49	---	5,780	---	---	12,616
William P. Wallace, Jr.	3,199	1121	---	5,496	188	---	5,630	---	---	12,616
Bertor F. Witter	1,682	158	---	1,731	141	---	1,282	---	---	2,862
Cameron W. Wolfe	10,500	54	---	10,500	51	---	10,500	---	---	11,692

1 Figure based on only a portion of the calendar year.

EXHIBIT D

AO 124—UNITED STATES COMMISSIONER'S APPLICATION FOR
SERVICE CREDIT, CIVIL SERVICE RETIREMENT SYSTEM

To the Administrative Office of the United States Courts,
Washington 25, D.C.

I hereby apply for service credit under the Civil Service Retirement Act for the following days not shown in my quarterly accounts on which I was required to perform services in the capacity of United States Commissioner as evidenced by appropriate entries in my docket book or other official case record but for which services no fees were prescribed:

DATE, DOCKET AND CASE NO., AND SERVICES RENDERED

Total number of days -----

I certify that the foregoing statement is correct to the best of my knowledge and belief.

(Date)

(Judicial district)

(Signature)

(Address)

Mr. WHITE. Thank you very much.

Mr. MINETA?

Mr. MINETA. There's been some concern that looking at the number of voucher days of the magistrates that we would be melting many people into the civil service retirement system who didn't really perform very many days of service, yet they're going to be given full credit for it.

In fact, they have been. Is there any way that you might suggest to the subcommittee that we would be able to justify giving full retirement credit for those even though there aren't a large number of voucher days that show the work that they performed?

Judge CARR. Well, we went through that with Mr. Ruddock earlier and it was difficult to find these days but for instance, my experience in San Francisco, Goldsmith who is on here, reached his \$10,500 maximum limit at about, usually, the third month of the year and then just stayed on with the court. He worked around the court and I think—was it permissible, Mr. McCabe, for them to appoint him as special master at that time?

I think the chief judge did that. Here is a man who's worked full time; he was always up at the courthouse.

Cameron Wolfe was similarly employed. He was across the bay in Oakland at the Alameda Naval Air Station and other defense installations there where they had a number of petty offenses and I'm sure that there can be—well, Mr. Kirk's letter to Mr. Rudduck gave us some indication of why this phrase "when actually employed"—WAE, "when actually employed" basis is really not a valid measure of the work done by commissioners.

I know from my own experience, when I was a commissioner for only 9 months, I found that I was working full time and then the fees only came in on the basis of that manual that you see there, \$2.50, \$3

and I was in a law office—thought I'd be a part-time magistrate forever, but I'm now a full-time magistrate.

But I think some statistical methods could be determined. I'm sure that before Mr. Kirks of the Administrative Office wrote the letter to Mr. Ruddock of Civil Service, that there was some kind of a statistical norm reached to determine just how much people had worked.

Now, I can't say that this thing wouldn't have dispersions in it based on certain judges, but they are awfully few.

Mr. MINETA. Did you see the testimony of Mr. Tinsley of the Civil Service in expressing fear that provisions of the bill would extend to 700 who at one time or another in the distant past might have served as a magistrate and therefore would be coming under the auspices of this legislation.

Judge CARR. Yes, I have a copy of that testimony. Well, I didn't want to interrupt you.

Mr. WHITE. Go ahead, sir.

Judge CARR. Do you have the copy of the bill that I suggested? I partly agree with Mr. Tinsley of the Civil Service.

Mr. MINETA. The intent is really just to cover those who were formerly magistrates and are now in the service as U.S. commissioners.

Judge CARR. U.S. magistrates. They are now U.S. magistrates. U.S. commissioners have been abolished as of 1971, is it Mr. McCabe?

So, there are no more U.S. commissioners. This isn't something that's going to move on forever and ever and increase.

Mr. MINETA. This is to include those who are in the service as magistrates.

Judge CARR. Right.

Mr. MINETA. This is not to cover those who have served in the past as U.S. magistrates—commissioners but who may be in some other civil service capacity.

Judge CARR. If you look at this list of 25 we have 1 who has retired already. Two of them resigned. You notice that newest list and there'll probably be others. Cameron Wolfe has already gone over to the bankruptcy court in the northern district, so he is a bankruptcy judge now.

I can't say that—I think Mr. Tinsley's right. I think we ought to be sure that that \$3,000 limit is kept in the bill. The bill that was introduced, Mr. Mineta took out both the \$3,000 and then the 1/260th days. See all of these men get even back as far as 1945, get a certain amount if they reached \$3,000 a year.

They get 1/260th credit and the way that's determined is when they're actually employed and the norm for determining when actually employed was voucher days, and dockets. Their dockets and how do you call that, Peter, in your—there are two entries that come in. The docket and—

Mr. McCABE. The date they received the fee.

Judge CARR. The date they received the fee. Some of those fees I remember when I first started on a case I might have a case that would go over a 10-day period and could only put in one lump fee of—I think the highest fee in there is \$8 but most of them are \$4, \$3, and \$250.

So my point in mentioning that is if anybody reached \$3,000 they must have been employed far more than the record shows and that's why I think that \$3,000 a year should be put back.

I think the first section of your bill should probably be subsection 1(E) of section 800—8331 of title 5 of the United States Code should not be amended—should be left as it is now and that would mean the bill and then section 1 would become section—or section 2 would become section 1 and 8331(E) of the Code would then determine who has creditable service.

To be honest with you, gentlemen, when I picked this up I was not involved in this but Mr. Mineta talked with me in San Jose and asked me to testify before this subcommittee on this bill. When I picked this up, I was concerned that the wrong draft had been handed you, Mr. Mineta.

But I thought I'd make my argument as I have on the basis that we leave \$3,000—the 3 years at \$3,000 in. The administrative office of the court and the judicial conference is not taking any position in opposition to this bill nor are they involved in this bill because this is only properly a matter for the National Council.

However, Mr. Peter McCabe, the chief of the magistrates division is here and I'm sure he has far more expertise than I do and if Mr. Mineta and the chairman wish to ask him any questions, I'm sure he'd be glad to answer them, but I am very concerned that \$3,000 is taken out.

I would respectfully suggest to the subcommittee that it be put back in.

Mr. MINETA. How would people qualify if you left \$3,000 in?

Judge CARR. Then this list—

Mr. MINETA. But that's the present salary. That has nothing to do with the salary that they performed under.

Judge CARR. No, if you'll notice exhibits—

Mr. MINETA. After all, it seems to me if they're working as U.S. magistrates today, they're covered under the civil service so it's really of no concern what their present salary is today.

Judge CARR. But it's the concern of the Congress as to how many others that are not magistrates who as Mr. Tinsley has indicated, could come out of the woodwork and be eligible.

Mr. MINETA. So you're saying limit the \$3,000 to days compensation?

Judge CARR. No, I'm saying just not amend—don't amend (1)(E) of section 8331.

Mr. MINETA. Then what happens to your exhibit B that deals with some people that only earned \$1,600 or a \$1,000 or \$400 over the time that they acted as U.S. commissioners? You would be essentially eliminating them.

Judge CARR. The chief of the magistrate's division may correct me but they're going to have the three highest years as magistrates and if you look through these years, there aren't too many that didn't go over \$3,000.

Are you looking at exhibit C, Mr. Mineta?

Mr. MINETA. I'm looking at exhibit B.

Judge CARR. Well, look at exhibit C. Those are—those were from 1964 to 1970.

Mr. MINETA. Okay.

Judge CARR. Even Engstrom who apparently had his business fall off in 1968, 1969 and 1970, he probably was such a good commissioner earlier that crime went down in his area. I'd say that would be the excuse to judge him, but you notice in 1968, 1969, and 1970 he is down but in 1964, 1965, and 1966 and even though he didn't make it in 1967, he did make it in 1964, 1965, and 1966.

So may I ask a question of Mr. McCabe? Mr. McCabe, would it be—

Mr. WHITE. Why don't you come and join the judge if you wish and give your full name for the record.

Mr. McCABE. My name is Peter McCabe, the chief of the magistrates division of the administrative office of the United States courts.

Judge CARR. Would it be difficult, Peter, to restructure this list?

Mr. McCABE. There are under 8331(E) a commissioner is entitled to creditable service—was entitled to retirement coverage if he earned \$3,000 per year in three successive years. The list of 28 people that you see in exhibit A are the only 28 who qualify under that \$3,000 a year provision and are now magistrates. Exhibit B as I see it—

Mr. WHITE. You mean the 28 have already made the \$3,000 in successive years?

Mr. McCABE. As commissioner and are now magistrates.

Mr. WHITE. What about commissioners that did not qualify?

Mr. McCABE. People who are now magistrates and do not qualify for \$3,000 and were a commissioner before, they would be covered by this bill as written here.

Mr. WHITE. How many are there?

Mr. McCABE. The Civil Service Commission estimated—I would say perhaps 250 but if you took out 8331(E) as Mr. Mineta suggested—

Judge CARR. Mr. Mineta didn't suggest it, I suggested that.

Mr. McCABE. I'm sorry, exhibit B as I see it is nothing more than taking those 28 individuals and phasing their earnings back to 1964, by fees they earned. Each one of those people had three successive years of \$3,000 even though they did not necessarily earn \$3,000 in each year.

Mr. WHITE. Three successive years but didn't make it in each year?

Mr. McCABE. That's right; they might have been a commissioner for 10 years and three successive years—

Mr. WHITE. Not consecutive years?

Mr. McCABE. They had 3 consecutive years during this service as commissioner.

Mr. WHITE. I thought you had to make \$3,000 in consecutive years.

Judge CARR. To be a commissioner for 6 years.

Mr. WHITE. It says U.S. commissioner total pay for service not less than \$3,000 in each of the last 3 consecutive calendar years in the civil service since 1964.

Mr. McCABE. There are some individuals on this list, for example, who made \$3,000 a year in 1968, 1969, and 1970 but in the—in some prior year did not make \$3,000.

Mr. WHITE. But they qualify under this?

Mr. McCABE. That's right.

Judge CARR. I, too, share Mr. Tinsley's concern that we have a number that we don't see and I don't know what the effects are of their going into another Federal job either.

Mr. WHITE. Are you finished, Mr. Mineta?

Mr. MINETA. Yes, sir.

Mr. WHITE. I want to ask a number of questions and, Mr. McCabe, if you'd like to answer some of these, too—

Presently the credit allowed to a magistrate who had served as commissioner for that time prior to becoming a magistrate is one two-hundred-and-sixtieth of the year for each day he served as a commissioner and it is not accumulated as I understand to require that you only get credit for a year if you had 260 days in that particular year.

Mr. McCABE. That's correct. That's your interpretation, OK.

Mr. WHITE. Under civil service the basis of our credit is accumulated time. Am I correct on that?

Mr. McCABE. Congressman, as I read it—

Mr. WHITE. I'm talking about all civil service employees.

Mr. McCABE. Right. He gets one two-hundred-and-sixtieth of a year each day, so if he worked 260 days he gets one two-hundred-and-sixtieth for the year. He's getting 1 day's credit for each day.

Mr. WHITE. He's getting accumulated which is different than the commissioners are treated.

Mr. McCABE. He is getting 1 day's credit.

Mr. WHITE. Did the commissioners accumulate their days from year to year? If they got 75 in 1 year and 75 in the following year, they would add those 2 up?

Mr. McCABE. That's right.

Mr. WHITE. So in that respect they're treated alike?

Mr. McCABE. Yes.

Mr. WHITE. OK. In the instance of Judge Carr, 1 year he had 209.

Judge CARR. That isn't—I don't have a cent hanging on this bill.

Mr. WHITE. I'm just using you as an illustration. In 1969 Judge Carr had 209 voucher days. Then in 1968 he had 233 voucher days.

Mr. McCABE. Right.

Mr. WHITE. In 1970 he had 214 voucher days so he didn't lose that time, that accumulates at the rate of 260 days per year. So he would probably be able to pick up 2-plus years in that period of time.

Mr. McCABE. If for example, he worked 203 days in 1 year this bill would get him the additional 260 days and be up to the 250 is what it amounts to.

Mr. WHITE. Were the commissioners obtaining social security on a self-employed basis during this period of time as they were receiving fees as a commissioner for this time?

Judge CARR. Most of them were in private law firms or they were their own—had their own firm. I was in a corporate law office so I don't remember what the custom was before 1971 before we started—

Mr. WHITE. Well, what I'm saying is; social security is withheld?

Judge CARR. I doubt it.

Mr. McCABE. I can get a ruling from our section but it would be my understanding that they would be considered Federal employees as to the service fees they would receive as commissioners.

Mr. WHITE. Did the law require them to pay social security and thereby get social security credit for the amount of income they received as a commissioner prior to this time?

Mr. McCABE. I would have to check.

Mr. WHITE. In other words, if they did, there might be a double retirement.

Mr. McCABE. I suspect they did not but I would prefer to get a ruling.

Mr. WHITE. Now as I understand exhibit D that was demonstrated here designated—

Judge CARR. Before you go on to that, Mr. Chairman, that problem could be solved by a simple sentence in the end of the bill there shall not be any duplication but I'm pretty sure that nobody is eligible for social security but it certainly—the bill should provide that they cannot get both.

Mr. WHITE. That's what we were driving at. The House seems to be a little touchy about double—

Judge CARR. I do not blame them; I agree.

Mr. WHITE. Mr. McCabe, if you will submit, for the record, answers to the questions they will be included in the record at this point upon receipt by counsel.

[The following response was received:]

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
SUPREME COURT BUILDING,
Washington, D.C., November 10, 1975.

HON. RICHARD C. WHITE,
Chairman, Subcommittee on Retirement and Employee Benefits, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.
(Attention of Ronald McCluskey, Esq.).

DEAR MR. CHAIRMAN: At your request I would like to offer for the record of the hearing on H.R. 8822 the following information concerning the compensation and retirement benefits of United States commissioners.

1. Coverage under the Social Security laws

Fees of United States commissioners earned on and after January 1, 1955 were subject to withholdings and matching agency contributions under the Federal Insurance Contributions Act. Once a commissioner qualified for civil service retirement coverage under 5 U.S.C. § 8331(1)(E), however, the Administrative Office terminated his FICA deductions and in lieu thereof deducted appropriate amounts under the Civil Service Retirement Act.

Accordingly, coverage under the two Acts was considered mutually exclusive. A United States commissioner was subject to the provisions of the Social Security law only up until the point he earned \$3,000 in fees for three consecutive calendar years.

2. Payment of fees

Under 28 U.S.C. § 633 (1964), the Administrative Office disbursed fees to United States commissioners regardless of the actual outcome of any pertinent proceedings. The statute itself, in fact, provided that fees be paid for "all services in connection with each formal application for a search warrant, whether granted or denied."

I hope that these remarks are responsive to your inquiries. If you need any additional information, please call (382-6413) or write.

With kindest regards, I am

Sincerely yours,

PETER G. McCABE,
Chief, Division of Magistrates.

Mr. WHITE. You, Judge, suggested that we would keep the \$3,000 qualifying minimum in the law as it stands now and I'm thinking of the theory of retirement.

As I understand, retirement is based on time and not necessarily money as a qualification. Money would be the gage as how much a person would make and not necessarily whether he is qualified for retirement. Is this your understanding?

Judge CARR. Because he was under the fee system, the \$3,000 is a measure of how much work he did.

Mr. WHITE. Well, for instance let us take the case of Judge Paul Game, Jr., who in 1968 put in 156 voucher days, yet received in fees \$2,881. From your chart only about one-third of the judges ever accumulated that many voucher days, I've circled those on my list that don't even accumulate 156 days.

In other words, Mr. Game would be denied his 156 days because he did not reach the \$3,000 level.

Judge CARR. But somewhere the law states in his last 3 years as a commissioner.

Mr. WHITE. Well, see what we're trying to do—

Judge CARR. You're quite right; he fluctuated between \$2,800 and \$3,000.

Mr. WHITE. He loses that year because he did not make \$3,000.

Mr. McCABE. My understanding is that—with three separate questions. The first question was is he entitled to retirement at all and as I read it, if he makes \$3,000 in the last consecutive years, he's in.

Mr. WHITE. Or all the years or for each year he made the minimum of \$3,000.

Mr. McCABE. I would read that he would be covered as a Federal employee and the second question of how much he gets and at that point the number of days becomes relevant because that is involved in the computation.

Mr. WHITE. If you're using that theory or that situation Mr. Game made over \$3,000 in the last 2 years but in the last 3 years, he did not make \$3,000 but in every instance he was marking more voucher days than any other judge.

You see 167 for 1964; 126 for 1966; 158 for 1966; 150 for 1967; 156 for 1968; 130 for 1969; and 197 for 1970. In the same column, look at Judge Leomporra. He never matched Judge Game.

Judge CARR. Where is Judge Game?

Mr. McCABE. He is in Florida. I think the reason for this depends—relates to the nature of the fees. At the fee of \$4 for a warrant or even say \$10 worth of fees a day, 150 days would only be \$1,500 so it looks to me that Judge Game had a few warrants and bails, scattered throughout the year.

Mr. WHITE. But you see how artificial the gage of money is.

Mr. McCABE. Right.

Mr. WHITE. I'm wondering whether if in fact the \$3,000 which is now used in this civil service retirement qualification should be maintained—the 5-year qualifying time.

Then whatever salary he makes is computed in by formulas.

Mr. McCABE. The 5-year retirement is the second question. The first question is whether a Federal employee for the retirement purpose, under present law, U.S. magistrates are automatically—once they are a Federal employee and covered by the retirement system they still have to meet the 5 years to be entitled to any retirement or

otherwise. If they don't have the 5 years, they get their money back in a lump sum.

Mr. WHITE. But Judge Game, for instance, is going to be denied his retirement.

Mr. McCABE. If he does not qualify for \$3,000 for his last 3 years, he gets no credit at all as I read it.

Mr. WHITE. Is that fair? That's what we are all here for.

Mr. McCABE. I understand.

Mr. WHITE. I can go down the list. In 1965, 51, 54, 99, 68, 97, and 126—I'm skipping about only two—69, 121, 93, 102, 154, 37, 64, 157, 101, and 85. Two thirds of them never see 159 voucher days but they all made more than Judge Game. Well, I merely point that out and the inequities when you use artificial standards and that is why I question whether we ought to retain the \$3,000 level.

I think it is fair going on the accumulated time. As you've recited to me, the law already says you can accumulate from year to year to year and the question is whether you total up 260 days over a period of time, how many 260 days you can accumulate and how much you credit on your retirement.

Well, let us see. Let us talk about the fee itself. Is there any other record other than this AO-124 as to how many hours, how many days were put on any one case?

Mr. McCABE. The only other record we have is the actual fee voucher. A U.S. commissioner every 3 months submitted to the administrative office a voucher for the fees that he had. The AO-124 that we have here is nothing more than supplemental to permit a commissioner to claim extra days. A day that he worked was not allowed to collect a fee.

Mr. WHITE. I presume that if a judge was watching what he was doing he has got all the credit for his time in.

Mr. McCABE. There are situations that very few commissioners did submit the 124.

Judge CARR. My experience with the commissioners was the one—ones who were thinking about nothing but retirement and getting those days of creditable service "when actually employed" days in, were spending more time making out forms than judging. Now we had in my own county a man who is a very able lawyer who was talked into taking the job for over a year and his office—he was just too busy to turn that in and when I took over his records, I saw this form AO-124, I asked him pointblank in the office, Andy, why did you not turn that thing in?

He said it costs me more to put that form in the Administrative Office with the girl taking care of this than it would to just forget it and go on to practice law.

Mr. WHITE. You know that if you go into court on a payroll case, if you do not have the records you do not get your pay, do you?

Judge CARR. That is right.

Mr. WHITE. Are the voucher days the only days that they charge a fee for?

Mr. McCABE. They are only the days to which he is entitled to a fee.

Mr. WHITE. Is there any record showing he accumulated other days according to the AO-124 form?

Mr. McCABE. The only ones we have are the AO-124 form for those people who are listed on exhibit C who claim them, for example, in 1970 we had only four who claimed them.

In 1969, four, and 1968 three commissioners and we would have I am sure the AO-124 form.

Mr. WHITE. So these are the actual reflection of the record?

Mr. McCABE. That is right.

Judge CARR. And it is obviously a record that does not comport with the facts.

Mr. WHITE. So now, for those who have accumulated the AO-124 days according to the civil service retirement, will they get credit for that time that they turned in?

Mr. McCABE. Yes.

Mr. WHITE. When was this law enacted, the basic law?

Judge CARR. 1954, wasn't it? 1954 I'm pretty sure.

Mr. WHITE. So in other words all these years these others did not record their AO-124 days. They were cognizant of the laws on the books; it was available to them; it was not a surprise to them.

Judge CARR. Well, Mr. Chairman, I question that for this reason. I will let the Administrative Office speak for itself but this manual that I gave to your counsel right there, that is a pretty official document and nowhere in that manual is there any reference, let alone the need for putting in these records.

Mr. WHITE. Let me ask you, Judge, is this in United States Code Annotated?

Judge CARR. No.

Mr. WHITE. Not in the United States Code Annotated?

Judge CARR. Oh, yes.

Mr. WHITE. That's what I go to when I want to check the law.

Judge CARR. So do I.

Mr. WHITE. That's what everyone of these magistrates could have done during that time to know that this would account for their retirement system.

Judge CARR. Except for the truism that everybody has shoes but the cobbler's son.

Mr. WHITE. What?

Judge CARR. Everybody has shoes but the cobbler's son.

Mr. WHITE. Well, the law also has a maxim about that too, Judge. I'm not trying to be difficult today; I'm trying to point out that people should come in with equity. We're trying to determine what relief they should have and whether they should have it.

Judge CARR. Let's look at the other side of the coin. Here's a man named Meatyard—

Mr. WHITE. What year are you speaking of?

Judge CARR. 1964 on exhibit C; 152, 139, 147, and 181 of those days. He never missed; 128, 130, 143.

Mr. WHITE. Where it said, "See, U.S.C." that's what he probably read.

Judge CARR. I know Mr. Meatyard is a very able magistrate. He's been our oldest commissioner actually, he and Cameron Wolfe are the two that are involved here and I'm trying to show you that there is inequity on the other side of the coin, as well, because we had an administrative office that didn't say send out a flag to somebody—well, where's your AO-124?

They do it now. If we don't get our——

Mr. WHITE. But you're not paid anymore by fee.

Judge CARR. Well, we're on an entirely different basis now.

Mr. White. The Government gets the advantage and that's why you get notice. Just like the IRS notifies the taxpayers and we're notified on our campaign reports and so on.

Judge CARR. We make the same reports.

Mr. WHITE. Did the commissioners obtain the same fee regardless of the disposal of the case?

Mr. McCABE. I'd like to say yes to that, Mr. Chairman. I believe that is correct. The only question I have in my mind would be on a warrant. I don't recall offhand whether he got a fee only if he issued a warrant, for example, if the law enforcement agent came to a commissioner for an arrest warrant or a search warrant and he refused to execute it, I don't know personally if he would get the fee or not but except for that one reservation, I would say yes.

Mr. WHITE. In other words, did the commissioners levy fines?

Mr. McCABE. Oh, yes.

Mr. WHITE. It didn't matter what fines he levied as far as his own fees go?

Mr. McCABE. No.

Mr. WHITE. How did you account for the disparity for the voucher days and the accumulated income that the commissioners had? In other words, for example, we had—in 1966 Judge Akerman had 33 voucher days. He made \$10,500.

Mr. McCABE. In his particular case I assume that he had to go to traffic court and he might have had scheduled every Monday traffic court, 30 or 40 cases and that would hike it up. Another magistrate might get a bail hearing every day and make a fraction of what the man in traffic court has.

Mr. WHITE. There was a difference—you talked about pure numbers so we don't have the caseload as any indication of what work they put in.

Mr. McCABE. The only thing we have would be the only vouchers that they submitted.

Mr. WHITE. I've finished with my questions.

Counsel?

Mr. McCLUSKEY. Following up on Mr. Akerman I would like to clarify for the record that \$10,500. As I understand it he didn't have to work any more after he made the maximum \$10,500; is that right?

Mr. McCABE. He was under no legal requirement but many commissioners did though.

Mr. McCLUSKEY. He could have 33 actual working days in traffic court and made the \$10,500 then he wouldn't have to work any more?

Mr. WHITE. Excuse me, may I ask what's the term of a commissioner? Is it fixed or the pleasure of the Justice Department or what?

Mr. McCABE. The term of a former U.S. commissioner and term of a part-time magistrate today is 4 years. Both of them are appointed by the judges of the district court.

Mr. WHITE. There are still commissioners?

Mr. McCABE. No, no, the part-time magistrate—I only mentioned that because the term of the part-time magistrate is appointed by the court and it is 4 years. A full-time magistrate has an 8-year term.

Mr. WHITE. How is he reappointed?

Mr. McCABE. A majority of the judges court appoint.

Mr. WHITE. Was he first confirmed?

Mr. McCABE. No.

Mr. WHITE. How much does the part-time magistrate get?

Mr. McCABE. Today the fee system has been abolished and each magistrate receives a salary set by the Judicial Conference of the United States upon a recommendation of the district court and the Administrative Office of the Court.

Mr. WHITE. When you say "part time" what does that mean?

Mr. McCABE. It would be as low as \$100 a year and as high as \$15,000.

Mr. McCLUSKEY. I want one last thing straightened out in my own mind. He worked 33 days probably as you say in traffic court. He received a maximum of \$10,500 and really didn't have to work but with passage of this bill he'd receive a year in retirement credit; is that correct?

Mr. McCABE. That's correct.

Mr. McCLUSKEY. Thank you, Mr. Chairman.

Mr. WHITE. What you're seeking by this bill is to allow 1 year's credit regardless of how many days one put in each year?

Mr. McCABE. Well, it's not our bill.

Mr. WHITE. The bill terms are——

Judge CARR. That's correct.

Mr. McCABE. That's the way I read it.

Judge CARR. Realize that precise equity can't ever be reached. We have men in national parks right now that have a certain salary put there mainly to be there. For instance, Yosemite National Park and they are there but they might have dockets number to 12. I have dockets numbers reaching pretty nearly over 3,000.

Mr. WHITE. Let's take the case of Mr. Akerman. What you're saying then in Judge Akerman's case in 1965 he accumulated 51 voucher days; 1966, 33; 1967, 84; 1968, 109; 1969, 33; well apparently he wasn't there in 1970. He slipped up.

Judge CARR. No, he might have been——

Mr. McCABE. The eastern district of Virginia was the first district to switch over to magistrate system.

Mr. WHITE. What I recited he would qualify for each year even though he may have accumulated for 5 years less than 260 days. He would then have 5 years of credit at the salary of \$10,500. He made \$10,500 each year; is that correct?

Mr. McCABE. That is possible.

Judge CARR. There is only one point we should make that in the years 1965 and 1969 are the figures based on a portion of the calendar year? The asterisk determines that, and the voucher days on the other years are for a full year.

Mr. WHITE. It probably would average out to that.

Judge CARR. Well as I indicated, Judge Goldsmith in our northern district, California, reached his \$10,500 before the end of the third month of the calendar year which amazed me and yet he stayed right on.

Mr. WHITE. Would that be fair to the taxpayers of this country to allow him a full retirement from the retirement fund for each year for putting in probably 2 months of work?

Judge CARR. The point is that he was a full-time magistrate and stayed right in the courthouse.

Mr. WHITE. I see, yes, sir. But now let me ask you this. What's the average number of hours a commissioner put in per day on the job?

Mr. McCABE. That would be open. Depends completely on the individual.

Mr. WHITE. Half a day, two hours, three hours?

Mr. McCABE. Traffic court might be 12 hours; if he issued a warrant 10 minutes. There would be absolutely no way to determine that at all.

Mr. WHITE. Would he have to stay and preside over the initial arraignment or whatever?

Mr. McCABE. Yes, sir, they were virtually on call 24 hours a day. Following the proceeding they would have to prepare various records and docket sheets and submit orders and there was paperwork and phone calls, variety of matters that are not strictly reflected in the voucher days.

Mr. WHITE. All these magistrates you listed that were commissioners have additional commissioners in their communities or some of these are sole commissioners?

Mr. McCABE. My own opinion would be sole commissioners. I know Mr. Akerman was one of two that handled Alexandria, Va., so they had two commissioners there. In some of your larger cities of Chicago, Los Angeles, there might have been three or four. Most of the people I see here were the only commissioners or maybe one of two.

Mr. WHITE. So it's safe to assume that if Mr. Akerman put in a total of days he sure would have looked up the book to see what he had coming to him.

Mr. MINETA. One of the things that's important to keep in mind here is the fact that the fees that they might have received were multiple days but they only get to submit justification for a service that was rendered and the service itself may be over a series of days.

Mr. WHITE. But they had a form for that. They had the AO-124. There was a provision that they could have accumulated their retirement time by advising—

Mr. MINETA. The manual for U.S. commissioners doesn't even refer to the AO-124.

Mr. WHITE. It refers to the United States Code.

Judge CARR. Mr. Chairman, Mr. Taylor is one of the men we have around here and he has the answer to that. He said in his letter to Mr. Kirks that the United States Code said this and the Civil Service Commission was going to decide that these men weren't entitled to this under the interpretation of the Civil Service Act but he said the Congress could change that.

He said—he told the men that the only way they could—he was turning them down and he told them the only way to do it was to go and get the Congress to straighten out the United States Code.

This has nothing to do with the United States Code and wasn't even mentioned in the manual. I imagine it was before Peter was in the office but this must have been sent out by bulletin or something and if you'd ever been a commissioner, Mr. White, you would have been amazed at the number of pieces of paper that came to us as bulletins.

Now, my experience alone in 9 months, just a period of gestation, as

a commissioner before I became a U.S. magistrate, I thought I was taking a part-time job where I would work in a law office in Monterey.

By the end of 9 months I didn't have time to eat. I filed one full brief and handled several cases and I was so loaded because we have about 15 Federal enclaves in the three counties or the two and a third counties in which I served and we had the national forest and Camp Roberts and all this and all around there and all of a sudden the minute they found out they had a commissioner on hand who would let anybody in the door, why I had 1,785 cases filed from Las Padres National Forest in 19—what year was that—1970, and they were all fire—it was just on fire and I decided I'll forget the law practice and see what we could do to straighten this out.

So I went up to get myself made a magistrate so I could at least get into the post office building and get some chambers so I wouldn't have to pay for that and do you know what Mr. McCabe in his magnanimity gave me as my monthly amount because of the lack of records—\$300 a month and I started at \$3,600 a year and I decided I had already retired—I decided somebody had to do something pro bono so I went to work.

There is never going to be any precise equity and justice in this whole thing. I do think in order to put the fears of the civil service retirement at rest, some kind of a measure ought to be in there even if it loses a couple of our men, but even they get one two-hundred-and-sixtieth accumulated.

Mr. WHITE. Not if they didn't make \$3,000 in the last 3 years.

Mr. MINETA. That's the way the law reads.

Judge CARR. I guess we need—

Mr. WHITE. That's what we've been driving at, Judge. That's the whole point in my questioning.

Judge CARR. I see an inequity here and I also see that it isn't going to come out even under any circumstances.

Mr. WHITE. I appreciate both of you appearing and Mr. Mineta and it is obvious that there is an inequity in it. I'm not sure that the inequity is what you think it is.

I think as legislators we are going to have to bring out some fairness so everybody is treated equally. I think most of the States have done away with this—

Judge CARR. We still have justices of the peace and the county supervisors won't—there's some even near you, Mr. Mineta, and in Monterey they can't go into municipal courts because of the supervisors—the justices of the peace get to the supervisors and say look you're giving up the fee.

Mr. WHITE. We repealed the fee system just recently in my State.

Judge CARR. The judge should be benignly objective about everything he does and he can't be objective if he's got his job or a certain amount of money hanging on what his actions are.

Mr. WHITE. I suspect Judge Roy Bean was a rich man.

Judge CARR. We have a river, too. He was west of the Pecos but the law south of the Pajaro River is benignly objective. Will you stipulate to that, Mr. Mineta?

Mr. WHITE. Is there any further testimony or comments at this time?

Judge CARR. It goes without saying that either Mr. McCabe or myself will be glad to answer any letters or other correspondence.

Mr. WHITE. Thank you. You've been very helpful and we will be hearing further on this for purposes of markup of the bill. The other members, of course, will have their input into it.

We are facing a different natured Congress right now and we have to take into consideration their attitude.

Judge CARR. I assume Congress will be very benignly objective as well.

What is that markup day—December 1?

Mr. WHITE. December 1, yes.

Judge CARR. December 1. All right.

That's a month. Is there a time set yet?

Mr. WHITE. 2:30 in the Speaker's dining room is normally where we have our markup. At the same place. If there is any change, do you intend to be present, Judge?

Judge CARR. I think correspondence is all I need from now on because it isn't worthwhile to bring me all the way from the west coast but apparently—

Mr. WHITE. You have much better weather right there.

Judge CARR. I, too, Congressman, worry about the expense of the National Council for buying an airplane ticket to bring me here. So we're on an economy kick.

Mr. WHITE. Thank you very much. The meeting is adjourned.

[Whereupon, at 10:15 a.m. the hearing was adjourned.]

[A copy of H.R. 8822, along with the reports received from the Office of Management and Budget and the Civil Service Commission, follows:]

Sincerely,

James M. Egan
James M. Egan
Assistant Director for
Legislative Relations

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NOV 3 1975

Honorable David N. Henderson
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

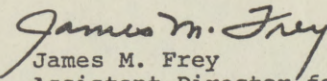
This is in reply to the Committee's request for the views of this Office on H.R. 8822, "To amend sections 8331 and 8332 of title 5, United States Code, with respect to the creditable service of United States Commissioners for purposes of civil service retirement."

The purpose of this bill is to allow certain U.S. magistrates to receive full-time credit for civil service retirement purposes for prior U.S. Commissioner service performed on a fee basis which did not qualify for retirement coverage unless fees totaled at least \$3,000 per annum.

In its report and testimony, the Civil Service Commission states a number of reasons for strongly opposing the service credit proposed.

We concur in the views expressed by the Civil Service Commission and, accordingly, strongly oppose enactment of H.R. 8822.

Sincerely,


James M. Frey
Assistant Director for
Legislative Reference

94TH CONGRESS
1ST SESSION

H. R. 8822

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1975

Mr. MINETA introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend sections 8331 and 8332 of title 5, United States Code, with respect to the creditable service of United States Commissioners for purposes of civil service retirement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That subsection (1) (E) of section 8331 of title 5, United States Code, is amended to read:

“(E) a United States Commissioner;”.

SEC. 2. Subsection (i) of section 8332 of title 5, United States Code, is amended to read as follows:

“(i) An individual who qualifies as an employee under section 8331 (1) (E) of this title is entitled to credit for his service as a United States Commissioner from the date of original appointment as Commissioner to the date of separation from the office, except that credit shall not be allowed for a period for which the individual received credit under this subchapter for services other than in the capacity of United States Commissioner.”.

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

November 3, 1975

Honorable David N. Henderson
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further reply to your request for the Commission's views on H.R. 8822, a bill "To amend sections 8331 and 8332 of title 5, United States Code, with respect to the creditable service of the United States Commissioners for purposes of civil service retirement."

Under 5 U.S.C. 8331(1)(E), the definition of "employee" includes a United States commissioner whose total pay for services performed as a commissioner is not less than \$3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954.

U. S. commissioners were paid on a fee basis with the fee depending on the service performed. If a U.S. commissioner qualified as an employee on the basis of total pay, he automatically became subject to the Civil Service Retirement law, and his service was creditable on a W.A.E. basis. If he never qualified as an employee, such service was not creditable.

H.R. 8822 would, if enacted, allow full credit for U.S. commissioner service from the date of appointment until the date of separation as a commissioner whether or not the individual ever qualified as an employee under the requirements of present law during such service.

The Commission would be strongly opposed to enactment of H.R. 8822 for a number of reasons.

When the office of U.S. commissioner was abolished and replaced by the office of U.S. magistrate by enactment of P.L. 90-578 on October 17, 1968 there were over 700 U.S. commissioners under appointment. However, only about 50 of these qualified as employees for purposes of retirement. Furthermore, they were eligible to receive credit for their commissioner

service only on a W.A.E. basis. Under the provisions of H.R. 8822, any or all of this group of over 700 individuals who subsequently acquired retirement coverage in any capacity could receive full-time credit for prior commissioner service.

As an extreme example for purposes of illustration, let us consider the hypothetical case of an individual who served as a commissioner for 5 years, during which time he performed 20 services requiring 15 minutes each, earned total fees of \$80, and, at the same time engaged in the private practice of law. In 1970, this individual was given a Federal appointment as an attorney and is still in service. If H.R. 8822 is enacted, he will be able to receive 5 years of credit towards retirement for a total of only 5 hours of service as a commissioner. If he retires in 1980 with an average salary of \$30,000, those 5 hours of commissioner service would be worth \$3,000 annually in annuity.

United States magistrates, on the other hand, have been given permanent appointments as Federal employees since that office was established. They are not paid on a fee basis but receive an annual salary. Section 634(c) of P.L. 90-578 reads in pertinent part as follows: "All United States magistrates, effective upon their taking the oath or affirmation of office; . . shall be deemed to be officers and employees. . ."

A 1967 Senate report on S. 945 which became P.L. 90-578 indicated that the phrase "effective upon their taking the oath or affirmation of office" was added deliberately. That report stated in pertinent part as follows: "This language circumvents potential difficulties in computing the retirement benefits of magistrates who have formerly served as U.S. commissioners. Retirement coverage of U.S. commissioners is very limited. This amendment precludes interpretation of the Federal Magistrates Act to convert, after the fact, service as a commissioner that does not qualify for retirement benefits under present law into service that is credited for retirement purposes."

The Senate report was concerned primarily with preventing the limited number of U.S. commissioners who might be appointed as U.S. magistrates from obtaining credit to which they were not entitled. The provisions of H.R. 8822 are in direct opposition to the expressed intent of Congress at that time. H.R. 8822 would not only allow credit, after the fact, for service which did not qualify for retirement benefits but would also allow full-time credit where eligibility exists only for credit on a W.A.E. basis.

In the Commission's opinion, enactment of H.R. 8822 would set a precedent which could be used in support of legislation to allow full-time credit for other types of employment which does not qualify as Federal employment or else does not qualify as full-time Federal employment.

We have been informally advised that approximately 28 U.S. magistrates had prior commissioner service. If only those 28 individuals were benefited by enactment of H.R. 8822, we estimate that the unfunded liability of the Civil Service Retirement Fund would be increased by approximately \$550,000. This amount would be amortized by 30 equal annual installments of \$34,100. However, we do not know how many former U.S. commissioners have subsequently become Federal employees in other positions and who would become eligible for credit under the provisions of the bill. Therefore we cannot estimate the possible cost of enactment.

For the reasons discussed above, the Commission is strongly opposed to enactment of H.R. 8822.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

Robert Hampton
Chairman

